



The Legislative Process

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This paper contains information about the Massachusetts legislative process and is intended to be used as a basic guide and supplement to other reading materials. This outline of the legislative process is meant as a tool, as an initial packet of information pertaining to the process. It is not a comprehensive study or analysis of the Massachusetts political process. The salient points in the legislative process are recorded in a chronological order corresponding to the route a bill takes from filing to legislative committee, to the House and Senate, and finally to the Governor's desk. Further reading is suggested, and for that reason, a basic reading list is included. This paper is intended for the novice student of the legislative process. It should help in understanding the complex structure of law-making in our Commonwealth.

House and Senate Clerks

Each branch of the legislature is served by a clerk. In both the House and Senate, the functions of the office are similar. The clerk's office performs a multitude of tasks, but it has two main functions: at the beginning of the session, legislative petitions are numbered in these offices and petitions are then referred to one of the joint committees for processing. Each committee deals with specific areas of legislation. For example, environmental legislation may be sent to the Committee on Natural Resources and Agriculture; petitions concerning education may be sent to the Education Committee, and so on. The work of the committees will be discussed later in this paper. The second important function of the clerk's office is to act as

a resource bureau. The clerk's office is open to the public, and serves the general public, legislators and their staffs, and lobbyists. For information on the status of legislation filed in the current year, the staff of the clerk's office has access to computer terminals that connect with a central computer bank loaded with the latest information available on legislative matters. Computer print-out books, available for public use, list all current legislative petitions by number, title, a list of principal sponsors and committee reports, and House and Senate data pertaining to floor action. Additionally, House and Senate roll call records are maintained by the respective clerk's office.

By law, any citizen of Massachusetts may file legislation with the sponsorship of a legislator. In cases where a legislator disagrees with the content of a bill, it is stated on the bill that the legislation has been filed "by request". The right of free petition, as it is known, is one of the unique aspects of the Massachusetts governmental process. The relative ease that free petition allows in filing legislation exists in only one other state, Oregon. Free petition encourages many citizens to file their own legislation each year. Massachusetts ranks near the top in numbers of legislative petitions filed annually.

The actual documents used in the legislative process are housed in the clerks' offices. Whenever action is taken on a legislative petition, a form designating the status of the legislation accompanies the petition. When a petition receives a committee recommendation, for example, either a favorable or an adverse report sheet is attached to the original bill. The method of placing status-designating forms with the original petition helps the clerk identify the status of legislation at a mere glance. By doing so, the "orders of the day" can be processed more expeditiously on the floor of each chamber.

Available daily in the clerks' offices and in the Legislative Documents Division (Rm 428) are the "House Calendar", "Senate Calendar", and the "Daily List of Legislative Committee Hearings". Each lists the bills to be acted upon in the respective chambers

on that day. The calendars are invaluable to those who want to watch the government in action on any given day.

A booklet entitled Legislative Procedure in the General Court of Massachusetts is available on request, free of charge, from the House or Senate Clerk's office for those interested in detailed procedures and rules of the Massachusetts Legislature.

The Bill in Committee

After petitions are numbered in the Clerk's office, they are referred to one of the joint committees by the Clerk acting for the Speaker or Senate President. The job of the committee is, in essence, to gather information about proposed legislation and to report to the House and Senate that a bill "ought to pass" or "ought not to pass". How does the committee go about this task?

Early in a legislative session, the committee holds public hearings on all pieces of legislation. Petitions are usually heard in category. The committee chairperson sets the hearing date (with bills grouped by subject), and the hearings on legislative petitions are completed by the deadline for reporting bills: the last Wednesday in April. Two of the more salient features of the Massachusetts Legislature are that all petitions must be given a public committee hearing and that all hearings are open to public observation and participation. This means that anyone can testify at a committee hearing on the legislation being considered. The open hearings tend to encourage greater public participation in the governmental process. In addition to the testimony of the general public, the committee hears the arguments of other legislators and lobbyists. It should be noted that nearly all legislative committees have joint membership and consist of both representatives and senators. The advantage of this is that people need testify only once before a joint committee, instead of giving two separate presentations before House and Senate committees.

Usually within a week after a public hearing, the committee meets in executive session to discuss the merits of a bill and to issue a report on that bill. The term "executive session" is somewhat of a misnomer and dates from the days when executive sessions were closed to the public. A few years ago, executive sessions were opened to public observation. The public may observe but not participate. At the executive session, a report or recommendation to the House and Senate is formulated by committee members. The committee report simply states that a bill "ought to pass" or "ought not to pass". Committees may opt to withhold the issuance of a report and instead redraft a legislative petition. On rare occasions, the legislative petitions are redrafted to such an extent that the original sponsors decide to withdraw their sponsorship.

The fact that all bills must be reported out of committee is another significant characteristic of the Massachusetts legislative process. In many other legislatures and in the U.S. Congress, bills can actually be killed by the committee. When a bill is killed in committee, it never reaches the floor of the House or Senate. Therefore, members of the legislature who are not on the committee are prevented from making attempts to consider or revive a bill. In Massachusetts, generally, committees cannot kill bills. Bills with negative as well as favorable reports are sent to the chamber for a first reading.

In spite of the fact that all bills are sent to the floor of the House or Senate regardless of the committee report, the report a bill receives has a great effect on its life. About 90% of the time, when a bill and its accompanying committee recommendation is presented to the House or Senate chamber in its first reading, the chamber accepts the committee report. This means that bills with adverse reports usually die at the first reading, and bills with favorable recommendations are scheduled for a second reading. House and Senate floor action will be discussed in greater detail in the next section.

Although a committee may issue an adverse report on a bill, it does not necessarily

indicate a lack of support for the content of a bill. Bills that cover areas that committee members feel are already served by existing statutes would, for example, receive a negative committee report. Sometimes deferment of a House or Senate vote is sought pending action on related proposals - or to gain time to accumulate votes in favor of a substitute bill. Of the more than seven thousand bills filed each year, fewer than 10% ever survive House and Senate action. Even fewer are signed into law by the Governor.

Committee assignments are decided by the Speaker and the Senate President who reserve power to appoint committee members and appoint the committee chairpersons. As a courtesy, the Speaker and Senate President usually allow the minority leaders of their chambers to suggest minority party members assignments. Fifteen representatives and six senators sit on each joint committee. Since the leadership determines committee makeup and selects committee chairs, the Speaker and Senate President have a good deal of influence over the activities of the committees.

Before going on to the House and Senate phase of the legislative process, it is important to review the significant and unique features of the Massachusetts legislative process:

- The right of "free petition" allows any Massachusetts residents to draft and file legislative petitions with the sponsorship of a legislator;
- The open hearing provision provides the opportunity for people to attend and testify at committee hearings, and gives the public the right to observe executive sessions;
- Committees must issue reports on all legislative petitions, and send bills to the House and Senate floor; and
- Nearly all committees have joint membership so that people need testify once before a joint committee instead of testifying at separate House and Senate committee hearings.

The Bill in the House and Senate

In the House and Senate chambers, the initial action on a bill is known as the first reading. It is the literal reading of the committee report. Most of the time, the committee report is accepted as is. Petitions with adverse reports usually die while petitions with favorable committee recommendations are scheduled for a second reading. Notwithstanding a negative committee report, bills can be revived by the action of a legislator. If (s)he calls for substitution at the time of the first reading, the legislator may produce a new yet similar bill at a future session. The killing of bills in committee, allowed in other legislatures, precludes the possibility of substitution as allowed in the Massachusetts legislative process.

Much of the debate on a piece of legislation occurs at the second reading. If a member wishes to discuss or debate a bill, (s)he calls out "pass" when the clerk reads through the Orders of the Day during the morning session. At the second reading, proponents traditionally rise to defend their legislation, and the opponents respond. It is during the second reading that bills are frequently amended. Following debate and possible amendment, a vote is taken to send a bill to its third reading.

If a bill is not ordered to the third reading, it is rejected and is dead. If a bill is voted to a third reading, it is referred to the Committee on Bills in the Third Reading, and it is placed in the Orders of the Day for the next session. This does not necessarily indicate, however, that a bill will be heard in the next session. No bill may receive a third reading until the Committee on Bills in the Third Reading issues its report. In short, the Committee on Bills in the Third Reading acts as a legal counsel group. It examines legislation to see that it remains within constitutional bounds and is in good legal form. The work of the committee is done, in practice, in the offices of the House or Senate counsel who works closely with the staff of the Speaker or Senate President. If passed on the third reading, a bill is sent to the other branch of the legislature where the same procedures are followed.

If the second branch passes a bill in an amended form, it is returned to the first branch for a vote of concurrence. If the second branch substitutes a new bill, it is sent to the first branch and must proceed through all stages of the committee review and three readings. Should the first branch fail to concur with the amendments approved by the second, then a conference committee may be appointed to draw up a compromise piece of legislation. The Speaker and the Senate President appoint three representatives and three senators respectively to form the conference committee. If the committee cannot reach a compromise, the legislation dies. (Although the Speaker and the Senate President can form an infinite number of conference committees, as a practical matter, that is unlikely to occur.)

When and if both houses approve a bill in identical form, it is engrossed - printed on special paper with a typewriter that simulates script. Once engrossed, the House and Senate each vote to enact the bill.

Subsequent to the arrival of a bill in the Governor's office, it may be recalled by the Senate for reconsideration. At that time, it may be rejected, amended or returned to the Governor without change. Any amendments must be approved by the House. This process of recalling a bill enables the Legislature to make amendments or gives the Governor additional time to consider a bill.

The time required to complete action on a bill varies enormously. Non-controversial bills may pass from the public hearing to final signature in only three weeks. On the other hand, a controversial piece of legislation may be help up at any stage for weeks or even months. In an emergency, suspension of the rules can permit a bill to complete the entire process in a single day.

Some differences exist in House and Senate parliamentary procedure. For example, senators have the option of tabling a bill - a move that places a bill in limbo and is sometimes used to politely kill a bill. Senators can pair votes, i.e, couple a negative vote with a positive one so that they cancel each other out. The pairing

motion is employed when senators wish to vote in advance of an actual roll call vote and be recorded, yet need not be present at the time of the vote.

Bills may encounter a variety of obstacles along the legislative process trail. In committee, the redraft of a bill may, in the eyes of supporters - sap the strength from the issue being promoted. Bills can be sent to Ways and Means ostensibly "for study" even when they do not have any financial impact. According to rules of the General Court, the Ways and Means, and Rules committees are not required to report bills out, and therefore, bills can be killed this way without any further action.

The Executive

The Governor has ten days to respond to legislation that has reached his desk following House and Senate passage. During that time his options are:

- to veto. A two-thirds' vote in both houses would be necessary to override his veto;
- to employ the power of executive amendment. Rather than veto legislation, the Governor may return it to the legislature with a recommendation for amendment(s);
- to sign the act into law. Unless it has emergency provisions, that act becomes law in ninety days; or
- to take no action. If the legislature is in session at the time, the act becomes effectively passed (enacted) in ten days. If the legislature has prorogued, the Governor's inaction becomes known as a "pocket veto" and the bill dies.

A close working relationship between the Governor and the legislature is important. The legislature, defining the powers and duties of the administration^{ve} departments and appropriating funds for them, exercises a good deal of practical control over

administrative affairs. Many aspects of the relationship between the Governor and the legislature emerge by custom and depend to a large extent on the particular personalities and political climate of a given period. Traditionally, the Governor delivers a message to the legislature each year at the first sitting. He reviews the situation of the state, outlines plans for the year and recommends legislative action. During the session of the General Court, he submits messages for specific legislation to implement his program. These messages are translated into specific legislation which then must follow routine legislative procedures.

The Governor's tasks include other important functions. As the chief administrator of all executive departments, the Governor appoints cabinet secretaries, and appoints judges with the approval of the Executive Council. The Governor serves as the head of state. One of the most significant functions of the Governor is to prepare and submit to the legislature the annual budget.

The duties of the Lieutenant Governor are not explicitly defined by statute and depend upon the needs of the Governor with who (s)he serves. The Lieutenant Governor is elected for a four-year period as part of a team with the Governor. In the absence, death or disability of the Governor, the Lieutenant Governor performs all duties incumbent upon the chief executive and has all the powers of the Governor. The Lieutenant Governor may also share in the ceremonial burdens of the state's highest office. The Lieutenant Governor presides and serves as a voting member of the Executive Council (also known as the Governor's Council).

The Executive Council consists of eight persons each elected from five senatorial districts in the Commonwealth. The powers of the Executive Council have diminished since the seventeenth century when the Executive Council was formed by the colonists for the purpose of providing a system of checks on the power of the British-appointed governor. Today, the Executive Council meets once a week and has very limited tasks within the power structure. The councilors:

- approve judicial appointments and pardons; (requested by the Governor)

- authorize expenditures from the treasury;
- approve appointments of constitutional officers if vacancies occur when the legislature is not in session;
- provide consent when the governor wishes to call special sessions of the legislature and to prorogue and adjourn a legislative session.

- Constitutional Officers -

The constitutional officers are so named because their offices are authorized by name in the state Constitution.

The Secretary of the Commonwealth is primarily responsible for maintaining public records and making them accessible to the public. Responsibilities include:

- distribution of the annual reports of state agencies and other public documents,
- printing and distribution of the Massachusetts Register which contains the rules and regulations promulgated by state agencies,
- supervision of public records with intervenor authority,
- registration of lobbyists and their expenditures,
- administration of state elections and preparation of Information for Voters booklet,
- receiving and maintaining filings which establish incorporations of business, public utilities, banks, religious, educational and charitable organizations,
- take a state census every ten years,
- issuance of commissions to notaries public, justices of the peace and appointed officials,
- register securities broker/dealers and agents,
- the Archives Division which houses valuable documents.

The Attorney General is considered the chief legal officer of the Commonwealth.

Primary responsibilities include:

- serving as the chief legal counsel to and representing the Commonwealth of Massachusetts,
- acting as the primary law enforcement agency of the state, enforcing laws and investigating violations aided by a staff of assistant attorneys general and district attorneys,
- working to eliminate fraudulent practices through the enforcement of legislation designed to aid the consumer,
- rendering opinions on legal matters, such as,
 - (a) formal opinions which go on record and act as a law until such time as they are overruled by a court decision;
 - (b) informal opinions which serve as guidelines for the governor, the legislature, etc.
- approving the form and execution of contracts involving the Commonwealth including titles and forms of deeds to land,
- approving the form and content of petitions under the initiative referendum to the Constitution.

The State Treasurer acts as the Commonwealth's financial broker. Duties include placing state funds in banks and investing state funds in securities allowed by law. Another aspect of the Treasurer's work involves the disbursement of state funds, done by warrants signed by the Governor, the State Comptroller and members of the Executive Council.

The State Auditor audits all state accounts and expenditures.

The Initiative Petition

An alternate method for affecting state laws is through the initiative petition.

There are four types of initiative petitions:

- Through the initiative petition for an act, a proposed law can be submitted to the voters for their approval or rejection.
- Through the initiative amendment petition, a proposed amendment to the constitution is placed before the voters for approval or rejection.
- A referendum petition allows the voters to approve or reject a law already enacted by the General Court.
- A public policy initiative petition is used to instruct the senator or representative from a district on a non-binding question of public policy.

When initiative petitions are first filed, they are sent to the Attorney General. The Constitution disallows fundamental changes in the law by petition in regard to religion, judges, the courts, particular localities of the Commonwealth, specific appropriations, and certain provisions of the Bill of Rights. If the petition is accepted as proper by the Attorney General, he prepares a summary and returns the summary with the initiative to the petitioners. The petitioners then file both the summary and the petition with the State Secretary. Within three weeks after the papers are filed, the Secretary prepares initiative petition forms with the summary printed thereon for voters to sign. After the required number of certified signatures are filed for constitutional amendment petitions or initiative petitions for an act, the Secretary transmits the petitions to the House Clerk for legislative action. In the case of public policy questions, the State Secretary and Attorney General draft the final form of the questions as they will appear on the ballot.

The requirements for each type of initiative petition vary. The collection of a certain number of signatures of registered voters is required for all initiative petitions. An initiative petition for a constitutional amendment has to be considered by two consecutively elected legislatures and twenty-five percent (25%) of the legislators sitting in joint constitutional sessions must approve the constitutional amendment at

both sessions for it to appear on the ballot. The constitutional amendment petition must be passed by a majority of voters in an election and at least thirty percent (30%) of the voters must vote on the question.

With the exception of the public policy initiative (which is non-binding), the advantage of the initiative petition is that it allows the voters to express themselves and take action on issues which the legislature may not wish to pass. The legislature has the power to amend constitutional amendment petitions but it may not amend the initiative petition for an act. Inasmuch as the initiative petition for a referendum concerns the possible repeal of a law enacted by the legislature, the General Court cannot alter a referendum. For more detailed information about the referendum, consult the Elections Division publication on Initiatives and Referendum questions.

The Function of Lobbyists

The Watergate-related scandals have tarnished the image of lobbyists somewhat, yet we are all potentially lobbyists. A lobbyist is, by definition, one who tries to influence public officials. In one sense, whenever we write to our public officials or visit them to discuss legislation or an issue, we are lobbying. Yet more often, lobbyists are considered to be those people who represent the views of special interest to legislators.

Lobbyists and the interests they represent are as varied as legislators. While some lobbyists are, in fact, well paid and work full-time on behalf of major business, charities, or civic groups, other lobbyists may be members of a neighborhood group volunteering spare time to struggle on behalf of some issue that personally concerns them. Nearly every issue of the day spurs people to action for and against a cause, whether it be tax incentives for business, welfare legislation, off-shore drilling, abortion or gay civil rights. Frequently the concerns of lobbyists are more locally-oriented and specialized; the construction of a highway or the closing of a factory are but two

examples.

The Commonwealth of Massachusetts defines lobbyists as any individuals or organizations hired to affect legislators (public officials, in general) or any individuals or organizations with expenditures exceeding \$250 per year for the express purpose of influencing public officials. By law, all lobbyists must register with the State Secretary's Public Records Division and must report twice yearly a list of principal officers of the lobbying group, a list of expenses, and the specific legislation involved in the lobbying effort. Failure to do so can result in suspension or prosecution.

Lobbying includes a variety of activities: "button-holing" legislators in the corridors of the State House, testifying at committee hearings, conducting and advertising campaign or meeting with civic groups to gather support are some examples of typical lobbying activities. The methods used to influence public officials differ according to the strategy, wealth and talents of each lobbying organization, and there is not a clear delineation of proper versus improper practice.

Lobbying plays a significant educational role in the legislative process. At committee hearings and in more formal ways, lobbyists provide an expertise that serves to inform legislators and the public about their side of the issues. Ideally, the dedicated and professional lobbyists are ones who have researched their concerns well. The skilled lobbyists must defend her/his point of view with sound arguments and documentation to committee members. The arguments and information lobbyists supply and assist legislators in their own decision-making about the issue at hand. (The Legislative Research Bureau and committee staffs also perform research in study of legislative affairs to keep legislators informed.) Lobbying is, one might say, an important adjunct to the legislative process.

The give-and-take of the executive and legislative branches in the legislative process, coupled with public response, the input of lobbyists and judicial review form the basis of the laws that govern us. As laws directly affect so many aspects of our lives, it is necessary to understand the process that creates those laws. The legislative

process programs are designed to clarify the Massachusetts governmental process. By doing so, we hope to encourage increased participation in the political process. A citizenry familiar with the dynamics of government is best prepared to govern itself in a democratic government.

The ultimate goal of this educational program is to contribute to a responsive and creative government.

State House Resource Areas

Legislative Documents Division (Rm 428)

Open to the public during business hours, the Documents Division contains and offers to the public the following documents:

- Senate Calendar - daily list of legislation being considered each day in the Senate;
- House Calendar - a daily list of legislation being considered each day in the House of Representatives;
- Daily List of Legislative Committee Hearings - another calendar, published daily, that contains hearing times, locations and the legislative petitions being considered that day at each committee hearing;
- Senate Journal - a summary of Senate activities, including roll calls, issued daily and published by the Senate Clerk's office;
- House Journal - a summary of House activities, including roll calls, issued daily, and published by the House Clerk's office;
- The Legislative Bulletin of Committee Work & Business of the Legislature - a weekly publication which lists summaries of all current legislation, indexed according to committee, with recent notations about the status of all legislation. Also, the Bulletin lists committee members and bills' sponsors.

Bulletins are priced at one dollar each. Yearly subscriptions cost \$25.00.

- Copies of all bills are available for the asking, by specific bill numbers. The Documents Division also houses a computer terminal providing up-to-date information on the status of legislation. Staff persons are available to lend assistance in obtaining information on legislation.

Calendars for the House, Senate and committees are also available in the House Clerk's office - Room 145, and in the Senate Clerk's office - Room 334.

Fingold State Library

Located at the rear of the third floor of the State House, the Fingold State Library serves the legislator, lawyer, government student and the general public. Borrowing privileges are extended to any resident of the Commonwealth. The State Library has all the major periodicals published in the United States, a law library, and a wealth of information about Massachusetts history.

Archives Museum

The Archives Museum preserves records of the Commonwealth from 1620 to the present. Over 1½ million documents are used by researchers, historians, lawyers and legislators. The Archives Museum illustrates Massachusetts history with 65 exhibits including handwritten transcripts from the Salem Witch trials and engravings of Paul Revere.

Both the Search Room and the Museum are open 9:00 to 5:00 weekdays.

The State Bookstore (Room 116)

The Commonwealth of Massachusetts, through its government agencies, publishes a great deal of information about the functions, actions and services of state government. Some of these publications are essential to many citizens who must have a detailed knowledge of laws and regulations. Available at minimal cost, most publications are intended for public distribution.

The State Bookstore, a division of the Office of the Secretary of the Commonwealth, offers easy accessibility to these publications. The Bookstore is self-service, with trained staff always on hand to help identify or locate state publications. A catalog is available for mail order service.

The Bookstore is located on the first floor of the State House in Room 116. It is open Monday through Friday from 9:00 a.m. to 5:00 p.m. Telephone inquiries may be directed to 727-2834.

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Suggested Reading

- The League of Women Voters. Massachusetts State Government. (Cambridge: Harvard University Press, 1970.)
- House Clerk. Legislative Procedure in the General Court of Massachusetts. (Boston: Causeway Print, 1963.)
- House/Senate Clerk. Manual for the General Court, 1973-1976.
- Sinclair H. Hutchings & Catherine Farlow. A Guide to the Massachusetts State House. (Boston: John Hancock Mutual Life Insurance Company, 1964.)
- Inside the State House. (pamphlet) League of Women Voters.
- Massachusetts State House. (pamphlet) Secretary of the Commonwealth.
- Office of the Secretary of the Commonwealth. Don't Stand There...Run! (pamphlet).
- Atkins, Hock & Martin. Getting Elected. (Boston: Houghton Mifflin Company, 1973.)
- Elwyn Mariner. This Is Your Massachusetts Government. (Arlington: Mariner Books, 1973.)
- Edwin Gere ed. Massachusetts General Court: Processes and Prophets. (Amherst: University of Massachusetts, 1972.)

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